



Procurement

The procurement of goods and services, such as buying supplies, retaining design professionals and awarding construction contracts is subject to the requirements of the **Common Rule for Uniform Administrative Requirements for Grants**, carried out by municipalities or not for profit entities, specifically **24 CFR Part 85** that states the implementation by the Federal Agency of Housing and Urban Development of the Common Rule. **Note Exception: Procurement regulations do not apply to homeowners/individuals or private, for profit entities/developers. However, there must still exist a reasonableness of costs.**

Municipalities doing their own procurement with VCDP grant funds must follow procurement procedures and standards equal to or exceeding those explained under **Agency Procedures, Chapter 10**. If you have questions about the applicability of those standards, contact your CD Regional Coordinator.

The key element of procurement is that the entire process provide for full and open competition. In order to meet this standard, you should:

- establish reasonable qualification requirements;
- establish reasonable levels of bonding and experience;
- establish competitive pricing between firms or affiliated companies;
- consultants on retainer must have been hired competitively;
- establish written procurement selection procedures.

The appropriate method for any given product or service is dependent on:

- the estimated cost or price;
- whether the procurement is for a service or product, and the type of contract to be utilized;
- whether the service or product is unique; and
- whether there is any eligible, qualified competition.

Procurement principals apply to the hiring of staff, consultants, or any other services. The principal procurement methods are:

- 1) **Small purchases of \$1,000 or less/unit or not more than \$25,000 in the aggregate.** Small purchase procedures are those relatively simple and informal procurement methods that are appropriate for procurement of services, supplies, or other property. If small purchase procedures are used for a procurement under a grant, price or rate quotations will be obtained from an adequate number (minimum of three) of qualified sources.

Key Elements Of Procurement

Four Methods Of Procurement

Small Purchases

2) **Contracts over \$25,000** must use either competitive sealed bids (the preferred method for most service, supply, and construction contracts), or negotiated competitive procurement.

a) **Competitive Sealed Bids:** Sealed bids are publicly solicited and a firm fixed-price contract (lump sum or unit-price) is awarded to the responsible qualified bidder whose bid, when in conformance with all terms and conditions of the invitation for bids, is the lowest price. *This method is required for contracts costing more than \$100,000 and is encouraged for contracts between \$25,000 and \$100,000.* In order for formal advertising to be feasible, appropriate conditions must be present, including, at a minimum, the following:

- a complete, adequate, and realistic specification or purchase description;
- two or more responsible suppliers who are willing and able to compete effectively for your business; and
- the procurement lends itself to a firm, fixed-price contract and selection of the successful bidder can be appropriately made primarily on the basis of price.

If formal advertising is used for procurement under a grant, the following requirements apply:

- At least 15 days prior to the bid opening date, bids should be solicited from an adequate number of known suppliers. In addition, the invitation to bid should be advertised in a newspaper of general circulation in the municipality at least twice in a two-week period. The time between the initial public notice and the opening of bids should be a minimum of 15 days. Other methods of solicitation include Electronic Bulletin Boards, direct mailings to potential vendors, direct mailings to vendors on a prequalified list, and/or publication in trade journals, the Works-in-Progress, and the Dodge Reports.
- The invitation for bids, including specifications and pertinent attachments, should clearly define the items or services needed; and indicate that in the event all bids received are over the amount budgeted the Grantee and/or Subgrantee/Borrower (Developer) reserves the right to conduct value engineering with the lowest and most qualified bidder.
- The bids should be logged in with the time and date of receipt, name of bidder and a procurement number; all bids received must remain sealed and in a safe place until the bid opening; the bids must be opened publicly at the time and place stated in the invitation to bid, and minutes to the bid opening must be maintained.

**Contracts Over
\$25,000**

**Competitive
Sealed Bids**

**Formal
Advertising
Requirements**

- Neither the cost-plus-a-percentage, nor the percentage-of-construction cost methods of contracting are allowed when you are spending federal money.
- A firm, fixed-price contract award should be made by written notice to the responsible qualified bidder whose conforming bid was the lowest.
- All rejected bidders must be notified in writing, unless present at the bid opening.
- Any and all bids may be rejected when there are sound, documented business reasons in the best interest of the program.

b) **Competitive Negotiation:** This method is used for contracts requiring services, supplies and materials. It also can be used for construction services costing between \$25,000 and \$100,000 that do not go through the sealed bid process. For construction services this method must result in a firm fixed price contract, with the selection of the contractor based on price. Proposals should be requested from a number of sources and the Request for Proposal (RFP) should be publicized. Negotiations must be conducted with more than one source and either a fixed price or cost reimbursement with an upset limit contract may be awarded, depending on what is appropriate to the project. If competitive negotiation is used, the following apply:

- Proposals should be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The request for proposals (RFP) should be publicized and reasonable requests from other sources to compete should be honored to the maximum extent possible.
- The RFP should identify all significant evaluation factors, including price or cost, where required, and their relative importance.
- You should provide mechanisms for evaluation of the technical aspects of the proposals received, as well as an evaluation of references and past work.
- The award should be made to the responsible qualified bidder whose proposal will be most advantageous to you. Unsuccessful bidders should be notified promptly in writing.
- You may use competitive negotiation procedures for procuring architectural and engineering services costing \$2,000 or more. The process begins by issuing a request for qualifications (RFQ). The respondents' qualifications are then evaluated and the most qualified competitor is selected, subject to negotiation of the cost of services for the project.

Competitive Negotiation

- 3) **Negotiated noncompetitive procurement (sole source)**, which is the least preferred method and requires prior approval in writing from the Secretary of the Agency. Approval for sole source procurement is not routinely granted, and can often become more time consuming than the competitive process. This means of procurement is through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined to be inadequate. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

- the item is available only from a single source;
- public exigency or emergency means that there is an urgency for the service that will not permit a delay which would result from a competitive process; or
- after solicitation from a number of sources, competition is determined to be inadequate.

- 4) **Using the same architect or engineer for both planning and implementation** is allowed if certain procedures are followed. If you are satisfied with the qualifications and performance of the consultant(s) who provided facilities planning or design services for the project and want to retain them for services during construction, you may do so without further public notice and evaluation of qualifications provided:

- the initial RFP clearly stated the possibility that the firm or individual selected might be awarded an agreement to provide services during construction;
- you attest that the original selection process was conducted in accordance with the provisions set out in these procedures; and
- no more than three years have passed since the date of formal notification of selection.

- 5) You may use other **innovative procurement methods** with the *approval of the Secretary*.

Whatever the required procurement method, you must document the following:

- the rationale for the method of procurement;
- justification of contract type;
- basis for contractor selection/rejection;
- basis for cost or price;

**Negotiated
Non-Competitive
Procurement**

**Retention of
Design
Professionals
During
Implementation
Phase**

**Required
Documentation**

- definition of evaluation criteria; and
- proper allocations of costs related to procurement and staffing which will be charged to the VCDP (includes preparing and maintaining time sheets).

The minutes of meetings that describe these items will be adequate. You must also maintain employment data which identifies the municipal work forces and staff complement by race, sex, age, national origin, handicap and familial status.

Make sure that the following steps are included in your procurement process:

- proper Equal Opportunity clauses in Request for Proposals (RFP's) and ads for personnel;
- proper procurement methods followed in all contract and personnel hires;
- opportunities provided for minority, women-owned and local small businesses in meeting your procurement needs.

All VCDP-funded projects must be accessible to all members of the public and all activities (administration, consulting, and construction) must be nondiscriminatory in design, application, and performance. You are required to ensure this by:

- verifying that the prime contractor and subcontractors are not listed on the HUD debarment list:
[HTTP://epls.arnet.gov/epls/servlet/EPLSSearchMain/1](http://epls.arnet.gov/epls/servlet/EPLSSearchMain/1)
- making sure that a prime contractor has been certified and registered with the Vermont Secretary of State's Office:
www.sec.state.vt.us/seek/database.HTM#corporations
- including written nondiscriminatory federal policy provisions in contracts (certifying to affirmative action-Equal Employment Opportunity); and
- documenting outreach efforts to solicit disadvantaged, minority, women-owned, and local business enterprises through newspaper advertisements, Dodge Reports, Works in Progress, and VCDP supplied listings.

Required Steps

Accessibility Requirements

The following entities may be contacted to secure names of businesses that are listed as women-owned, minority and local small businesses:

VCDP Grants Management/ACCD One National Life Dr.- Drawer 20 Montpelier, VT 05620-0501 Tel: (802) 828-3211	VT Vocational Rehab Rutland, VT Tel: (802) 773-5866
Vermont Agency of Transportation 133 State Street Montpelier, VT Tel: (802) 828-2717	CEDO Burlington Trades Women Job Bank Burlington, VT Tel: (802) 865-7181
Jayco Enterprises RR 1 63 Campbell Street White River Jct., VT 05001 Tel: (802) 295-2579	Vermont Works for Women 32A Malletts Bay Ave. Winooski, VT 05404 Tel: (802)655-8900 Toll Free: 800-639-1472
VT Associated General Contracts State Street Montpelier, VT 05602 Tel: (802) 223-2374	U.S. Small Business Administration 87 State Street Montpelier, VT Tel: (802) 828-4422

Note: *In the event all bids received are over the amount budgeted the Grantee and/or Subgrantee/Borrower (Developer) reserves the right to conduct value engineering with the lowest and most qualified bidder.*

Contracts

Now that the necessary goods and services have been properly procured, you will need to develop the legal documents necessary to establish contractual obligations and rights. There must be written contracts for all purchases with VCDP grant funds except small purchases under \$1,000. Expenditures for administrative services, materials and construction require contracts. As with all contractual obligations, you are advised to seek the advice of legal counsel concerning the rights, duties, obligations and liabilities arising from these legal arrangements.

All contracts and written agreements must contain the following minimum requirements:

- 1) correct names of the parties to the contract;
- 2) method of compensation, including a fixed price and the basis for payment which specifies what must be done before payment will be made;
- 3) specific scope of services, including a detailed description of the work to be performed and/or products to be delivered, the schedule for performance, and specification of materials;
- 4) effective date of the contract and specific length of time over which the contract is to be performed;
- 5) geographic location of contract performance;
- 6) basis for termination, default or cancellation;
- 7) how disputes are to be resolved;
- 8) provision for amendments;
- 9) reference to the Grant Agreement number and its activities under which the funds are being paid with provisions binding the contractors to the terms of the Grant Agreement;
- 10) contract representatives of grantee, contractor, subcontractor(s);
- 11) there are four federal pass through requirements:
 - a) conflict of interest;
 - b) equal opportunity;
 - c) retention of and access to records; and

Minimum Requirements of A Contract

- d) Audit Requirements, where applicable;
12) Signatures.

The required language for these pass-through requirements can be found in Sections XV, XVI, XVIII and XX of the Grant Agreement. See Chapter 2, Sample Grant Agreement, beginning on page 2-6. You have the option of:

- a) inserting the language directly into the contract;
- b) citing the Grant Agreement by number and attaching it to the contract as an appendix; or
- c) citing the Grant Agreement sections by number and incorporating the Grant Agreement by reference.

It is essential that the contract be consistent with the requirements of the Grant Agreement, since that is the “master” contract. Pay particular attention to the terms and conditions concerning the scope of the project, implementation schedules, and budgeted amounts.

Contracts may also need items such as employment agreements, schedules of payments, reporting requirements, etc. For contracts over \$10,000, you must report contracts awarded as described in the Progress Report. A Sample Progress Report appears in Chapter 4, page 4-87 through 4-91.

Sometimes you must submit to the Department contracts or loan agreements for review and approval. This will be specified in Attachment A of the Grant Agreement. Failure to do so will delay the requisition process.

Construction Contracts

The construction phase of your project consists of four major components:

- development of the bid document, including plans and specifications, cost estimates, and deductive alternatives, and determination of the prime contractor;
- development and execution of the construction contract;
- conduct of the pre-construction conference and the start of construction; and
- ensuring labor compliance during the course of construction.

The construction contract will include all items that are in the bid package, along with the standard contract terms and conditions, bid proposal, contractor certifications, and bond and insurance forms. You should be concerned with both the body of the contract as well as the compliance requirements which are

**Pass-Through
Requirements**

**Consistency With
Grant Agreement**

**Review And
Approval**

**See Chapter 7 for
More Information
on the Pre-
Construction
Conference and
Labor
Compliance**

frequently included as exhibits to the base contract. The Department recommends the standard AIA construction contract (Form #201A - available from Associated General Contractors in Montpelier) as a model. We have included at the end of this chapter, page 6-12, a Sample Contract that includes all the minimal requirements.

Specific items which must be covered in any construction contract funded through the VCDP are:

- 1) citation of Grant Agreement by number, clauses that relate to Attachment A of the Grant Agreement (Special Conditions) and Attachment B of the Grant Agreement (Description of Activities) that affect the construction contract;
- 2) clauses that contain information which specifically delineates who is responsible for accomplishing each specific construction activity, including but not limited to, securing rights of way, easements, and all necessary permits;
- 3) clauses which specifically deal with insurance and bonding, including but not limited to bid bonds, performance bonds, payment bonds, Worker's Compensation, contractor liability insurance; all bonds and insurances must be in the proper amounts; (information on Construction Bonding appears in ***Agency Procedures, Chapter 11***);
- 4) clauses dealing with any unique construction requirements, such as, materials' storage and removal, traffic control, work hours, protection of property, etc.;
- 5) clauses to ensure the pass-through requirements of the VCDP to primary contractor and subcontractor: access to records, conflict of interest, Audit Requirements, and equal employment opportunity, to the extent to which they apply;
- 6) clauses relating to release of liens by contractor or subcontractor;
- 7) clauses which specify the relationship of primary contractor to subcontractor and who is responsible for which activities;
- 8) Labor Standards requirements which include a copy of an official wage determination and reference to all Davis-Bacon requirements including Copeland Anti-Kickback Provisions and provisions of the Contract Work Hours and Safety Standards Act;
- 9) complete names, titles and addresses of all parties and the complete Federal Identification Number (FID) or social security numbers of the contractor(s);
- 10) specific dates of performance (start and completion);

**Construction
Contract
Minimum
Requirements**

- 11) fixed amount of payment;
- 12) definition of what constitutes substantial completion and final completion;
- 13) method and schedule of payment;
- 14) clause requiring complete documentation of requests for payment from the primary contractor and the subcontractors;
- 15) method by which change orders are to be accomplished and stating that they must be reduced to writing and signed by all parties prior to work being done;
- 16) provision for written notice to proceed with work and to stop work;
- 17) progress reporting requirements;
- 18) clauses relating to monitoring activities and responsibilities of the owner and prime contractor in carrying them out;
- 19) provisions for termination, default, cure (if applicable), arbitration of disputes and power to resolve; and
- 20) retainage or contingency to be held.